Filed 2/11/04 In re Daniel A. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re DANIEL A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. DANIEL A., Defendant and Appellant.	A102372 (Alameda County Super. Ct. No. J186037)

Following a contested jurisdictional hearing, the trial court found that appellant committed the offense of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), with infliction of great bodily injury upon the victim (Pen. Code, § 12022.7). After the dispositional hearing, appellant was declared a ward of the court and placed on probation in the custody of his mother. On appeal, he challenges the drug testing condition of his probation. We find that imposition of the condition was neither an abuse of discretion nor violative of appellant's constitutional rights. We therefore affirm the judgment.

STATEMENT OF FACTS

Appellant and three of his friends assaulted the victim following an altercation at a party. During the attack, the victim was thrown to the ground, where he was punched and kicked repeatedly by the group. Appellant then extracted a knife or screwdriver and stabbed the victim multiple times, inflicting extremely serious stab wounds to the victim's shoulder, the forehead above the right eye, throat, chin and back. After the

group stopped the attack, appellant returned momentarily to administer an additional kick to the victim. Witnesses to the assault feared that the victim had been killed.

The dispositional report indicated that appellant had "no significant history of gang involvement" or record of prior felony offenses, but was "associating" with gang members on the day of the assault. While in juvenile hall after the offense was committed, appellant "instigated a physical altercation," and subsequently "punched a concrete wall in his room injuring his hand." Appellant was resistant to proposed anger management counseling, and agreed to attend only to appease his mother and "help his case." During an interview appellant acknowledged that he "helped kick and hit the victim a few times" before he "ran away," but denied that he stabbed the victim. Appellant stated that he remained "mad at the victim because what he said is not true," and according to the report "has no remorse" for his role in the assault. Only a few days before the scheduled dispositional hearing appellant was detained and arrested in San Mateo County for driving his father's car without a license, in violation of the terms of his electronic monitoring contract.

Appellant admitted that he "tried marijuana and alcohol, but he only experimented with either one time." He asserted that his participation on the school wrestling team "has kept him away from drugs." His mother also denied any "history of alcohol or substance abuse" by appellant.

The Guidance Clinic Report submitted to the court stated that psychological evaluations of appellant indicated "a low probability of having Substance Abuse or Substance Dependence Disorder." Nor did the use of alcohol or controlled substances contribute to the offense. According to the report appellant did "not appear to be relying on drugs or alcohol to cope" with the "current stressors" in his life, but "given the history of alcohol abuse within the family" he is "at risk of developing problems with alcohol and substance abuse in the future." The report further offered the opinion that appellant's "capacity to cope effectively with stress and to manage his violent and aggressive impulses will surely be compromised if this occurs."

Following the dispositional and placement review hearings the court departed from the Probation Department recommendation and granted appellant probation. The court imposed the "standard drug conditions," one of which is to "[s]ubmit to urinalysis or other test for use of narcotics or other controlled substances as directed by the Probation Officer."

DISCUSSION

Appellant complains that the drug testing condition is unreasonable and violates his constitutional right to privacy. He argues that neither the circumstances of the offense nor his "entire social history" justifies the imposition of a random drug testing condition.[1]

We review the reasonableness of the imposition of the drug testing condition in accordance with established principles. A probation condition "will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' [Citation.]" (*People v. Lent* (1975) 15 Cal.3d 481, 486 [124 Cal.Rptr. 905, 541 P.2d 545], fn. omitted; *People v. Rugamas* (2001) 93 Cal.App.4th 518, 522 [113 Cal.Rptr.2d 271].) "Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*People v. Lent, supra,* at p. 486; *People v. Zaring* (1992) 8 Cal.App.4th 362, 370 [10 Cal.Rptr.2d 263].) "Numerous decisions of our Supreme Court and this district have upheld the 'broad discretion' granted to the trial courts in 'routinely imposing' standard conditions of probation, where the conditions imposed, objectively viewed, bear a reasonable relationship to the crime or the rehabilitation of the offender." (*People v. Torres* (1997) 52 Cal.App.4th 771, 776 [60 Cal.Rptr.2d 803].)

---

[1] Based upon our examination of the record, we find that appellant interposed an objection to the drug testing condition in the trial court, and therefore did not waive his right to raise the issue in this appeal.

The discretionary authority of the juvenile court to set probation conditions is even broader than that of the criminal court. (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203 [6 Cal.Rptr.2d 678].) Imposition of probation conditions upon a juvenile is governed by Welfare and Institutions Code section 730,[2] which provides in pertinent part, that " '[t]he court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' (Subd. (b).)" (*In re Binh L., supra,* at p. 203.) "The juvenile court's broad discretion to fashion appropriate conditions of probation is distinguishable from that exercised by an adult court when sentencing an adult offender to probation. Although the goal of both types of probation is the rehabilitation of the offender, '[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor's reformation and rehabilitation.' [Citation.] '[J]uvenile probation is not an act of leniency, but is a final order made in the minor's best interest.' [Citation.] [¶] In light of this difference, a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court." (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81 [32 Cal.Rptr.2d 33, 876 P.2d 519].)

Section 729.3 also specifically provides that where, as here, "a minor is found to be a person described in Section 601 or 602 and the court does not remove the minor from the physical custody of his or her parent or guardian, the court, as a condition of probation, may require the minor to submit to urine testing upon the request of a peace officer or probation officer for the purpose of determining the presence of alcohol or drugs." Under section 729.3, "when the minor remains in the custody of his parents, the court has the authority to require urine testing for the purpose of determining if the ward is using drugs or alcohol." (*In re Robert H*. (2002) 96 Cal.App.4th 1317, 1331 [117 Cal.Rptr.2d 899].) "The use of the word 'may' in the statute indicates that the chemical testing condition is permissive." (*In re Jason J*. (1991) 233 Cal.App.3d 710, 718 [284

[2] All further statutory references are to the Welfare and Institutions Code.

Cal.Rptr. 673].) "[S]ection 729.3 commits the decision to order testing in a particular case to the juvenile court's discretion." (*In re Kacy S.* (1998) 68 Cal.App.4th 704, 708 [80 Cal.Rptr.2d 432].) In exercising discretion to plan the conditions of a minor's supervision, " ' "the juvenile court must consider not only the circumstances of the crime but also the minor's entire social history. [Citations.]" [Citation.]' [Citations.]" (*In re Binh L., supra,* 5 Cal.App.4th 194, 203; see also *In re Angel J.* (1992) 9 Cal.App.4th 1096, 1100 [11 Cal.Rptr.2d 776]; *In re Michael D.* (1989) 214 Cal.App.3d 1610, 1616 [264 Cal.Rptr. 476]; *In re Jimi A.* (1989) 209 Cal.App.3d 482, 487-488 [257 Cal.Rptr. 147]; *In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1153 [244 Cal.Rptr. 254].)

As a threshold matter we find that the juvenile court did not fail to exercise discretion in setting the conditions of appellant's probation. The court's pronouncement that the "standard drug conditions" were favored by "Judge Travis, who heard all of the evidence in this case" at the prior dispositional hearing, was not an "abdication of all discretion," as appellant claims. As we read the record, at the placement review hearing the court properly considered the evidence and the additional conditions proposed by the probation department before deciding to impose the drug testing condition.

We also find that the drug testing requirement, although not directly related to the crime committed, is reasonably related to appellant's rehabilitation and deterring future criminality. "The urine testing condition is designed to detect the presence of substances whose use by minors *is unlawful*. [Citations.] Thus, the testing ' "relates to conduct which is . . . in itself criminal." ' [Citation.] Moreover, in enacting section 729.3, the Legislature has found that 'alcohol and drug abuse' are 'precursors of serious criminality . . . .' [Citations.] Thus, the testing is also ' "reasonably related to future criminality." ' [Citation.] Because the testing condition relates to criminal conduct and is reasonably related to future criminality, its imposition is within the juvenile court's discretion even as measured by the *Lent* formulation." (*In re Kacy S., supra,* 68 Cal.App.4th 704, 710.)

Further, even without any indication that abuse of alcohol and drugs are implicated in appellant's social history, the record viewed in its entirety nevertheless justifies the drug testing condition. (*In re Kacy S., supra,* 68 Cal.App.4th 704, 710-711.)

Appellant was treated with extreme leniency. He was granted probation and home placement for an iniquitous and exceedingly vicious assault, the gravity of which he does not yet seem to fathom, given his abiding denials of fault, the absence of expression of remorse for the crime, and lack of recognition of the crucial need for counseling. He also committed further acts of aggression in juvenile hall after the assault. Thus to protect the public safety, it is necessary to closely monitor appellant to avert or detect drug use that may contribute to further violent acts by him. The Guidance Clinic Report confirmed that any abuse of alcohol or drugs by appellant would compromise his already tenuous capability to manage and restrain his proclivity to violent and aggressive behavior. And while appellant exhibited neither a current reliance upon drugs or alcohol nor a manifest, imminent inclination to engage in substance abuse, based upon his family history the report denoted a cognizable future risk of alcohol and drug abuse. Appellant also divulged that he previously "experimented" with alcohol and marijuana, which at least displayed a willingness to use drugs in the past. The common use of narcotics by gang members with whom appellant associated on the night of the assault also provides support for the imposition of a drug testing condition. (*In re Jason J., supra,* 233 Cal.App.3d 710, 718-719.) We conclude that imposition of the condition was within the trial court's discretion based upon the record presented.

We turn to appellant's contention that the drug testing condition violates his constitutional right to privacy. If " ' "a condition of probation requires a waiver of precious constitutional rights, the condition must be narrowly drawn; to the extent it is overbroad it is *not* reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights." . . .' . . . 'If available alternative means exist which are less violative of a constitutional right and are narrowly drawn so as to correlate more closely with the purpose contemplated, those alternatives should be used . . . .' " (*People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139 [199 Cal.Rptr. 357], citations and fn. omitted; see also *People v. Zaring, supra,* 8 Cal.App.4th 362, 371; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242 [285 Cal.Rptr. 16]; *People v. Watkins* (1987) 193 Cal.App.3d

1686, 1688 [239 Cal.Rptr. 255].) Probation conditions are valid, however, "even though they restrict a probationer's exercise of constitutional rights if they are narrowly drawn to serve the important interests of public safety and rehabilitation [citation] and if they are specifically tailored to the individual probationer." (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084 [22 Cal.Rptr.2d 893]; see also *In re Tyrell J., supra,* 8 Cal.4th 68, 82; *People v. Peck* (1996) 52 Cal.App.4th 351, 362 [61 Cal.Rptr.2d 1].)

The collection and testing of urine intrude upon expectations of privacy that society has long recognized as reasonable; these intrusions are searches under the Fourth Amendment, and thus are constitutionally permissible only if they meet Fourth Amendment standards of reasonableness. (*Skinner v. Railway Labor Executives' Assn*. (1989) 489 U.S. 602, 617 [109 S.Ct. 1402, 103 L.Ed.2d 639]; *Loder v. City of Glendale* (1997) 14 Cal.4th 846, 867-868, 876 [59 Cal.Rptr.2d 696, 927 P.2d 1200]; *Kraslawsky v. Upper Deck Co*. (1997) 56 Cal.App.4th 179, 185-186 [65 Cal.Rptr.2d 297].) "The United States and California Constitutions proscribe only *unreasonable* searches and seizures. 'In determining the standard of reasonableness applicable to a particular type of "search" or "seizure," a court must balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." [Citations.]' [Citations.]" (*In re York* (1995) 9 Cal.4th 1133, 1149 [40 Cal.Rptr.2d 308, 892 P.2d 804].) "What is reasonable, of course, 'depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself.' [Citation.]" (*Skinner v. Railway Labor Executives' Assn., supra,* at p. 619; *Loder v. City of Glendale, supra,* at p. 867.)

We agree with the decision in *In re Kacy S., supra,* 68 Cal.App.4th 704, 711, in which despite the lack of evidence of the minor's prior use of alcohol or drugs, the court concluded: "The testing condition is a reasonable intrusion upon a probationer's expectations of privacy. [Citation.] The governmental interest in testing is strong. The juvenile court's goals are to protect the public and rehabilitate the minor. [Citations.] Section 729.3 serves both goals. It protects the public by establishing procedures to deter or prevent use of alcohol and unlawful drugs by minors. It advances the rehabilitation of

young offenders by seeking to detect alcohol or drug use as a precursor of criminal activity in order to facilitate intervention at the earliest time. [Citations.] Although urine testing constitutes an intrusion on privacy, the effect of the intrusion is outweighed by the government's legitimate interest in closely monitoring the rehabilitation of minors who are granted probation and returned to the custody of their parents." (See also *People v. Balestra* (1999) 76 Cal.App.4th 57, 69, fn. 9 [90 Cal.Rptr.2d 77].) The drug testing condition did not violate appellant's constitutional rights.

Accordingly, the judgment is affirmed.

_____

Swager, J.

We concur:

_____

Marchiano, P. J.

_____

Stein, J.